

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	§	
	§	
Developing a Unified Intercarrier	§	CC Docket No. 01-92
Compensation Regime	§	
	§	

COMMENTS OF THE PUBLIC UTILITY COMMISSION OF TEXAS

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The Public Utility Commission of Texas (Texas PUC), having regulatory authority over public utilities within our jurisdiction in Texas, respectfully submits these comments in response to the Public Notice issued by the Federal Communications Commission (Commission) in the above-captioned proceeding.¹ As discussed in the Public Notice, the Commission seeks comment on an intercarrier compensation reform plan (the “Missoula Plan”) filed on July 24, 2006 by the National Association of Regulatory Utility Commissioner’s Task Force on Intercarrier Compensation (NARUC Task Force).

While the Texas PUC believes that reform of intercarrier compensation rates and the achievement of a unified rate for traffic exchanged between carriers are essential objectives, and commends the NARUC Task Force for its efforts in attempting to devise a plan to achieve those objectives, the Texas PUC has concerns about some aspects of the Missoula Plan. Among these concerns are

¹ *In the Matter of Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Public Notice. “Comment Sought on Missoula Intercarrier Compensation Reform Plan.” DA 06-1510 (rel. July 25, 2006).

the potential for harms to customers in the form of increased Subscriber Line Charges and Universal Service Fund assessments with no guarantee of offsetting benefits and the potential for harms to competition in the telecommunications marketplace. In addition the Texas PUC is concerned that the provisions of the plan that preempt state authority over certain access and interconnection rates may run afoul of the law and would have the effect of sacrificing the unique expertise that state commissions bring to determining the best rate structure for the respective states. Finally, the Texas PUC believes that the Missoula Plan fails to achieve the objective of unifying intercarrier compensation rates, ending its proposed transition period with a variety of different rate levels, depending on the size of the carrier, whether it is rate-of-return regulated or under incentive regulation, and whether it is in a rural area.

I. The Missoula Plan Has the Potential to Harm Customers in Texas With No Guarantee of Offsetting Benefits.

The Missoula Plan calls for reductions in interstate and intrastate access charges to be offset both by increases in the Subscriber Line Charge (SLC) and by, presumably, increases in the interstate Universal Service Fund (USF) assessment to fund the plan's "Restructure Mechanism."² Furthermore, the Plan provides that SLC charges may be deaveraged geographically, according to customer class, or according to the type of service or service bundle purchased.³

² "The Missoula Plan for Intercarrier Compensation Reform" (Missoula Plan or Plan), at 19, 63.

³ *Id.*, at 24-25.

The nationwide SLC cap would be increased to \$10.00 for Track 1 carriers, and to \$8.75 for Track 2 and Track 3 carriers.⁴

The Texas PUC is concerned that such a dramatic increase in the SLC along with increases in the USF assessment could adversely impact the affordability of basic telephone service in Texas, particularly in rural areas and in areas where competition has been slow to develop. To the extent that incumbent local exchange carriers (ILECs) choose to deaverage the SLC charge, it is more than likely that decreases to the SLC rate will occur in areas where competition is more vigorous – primarily urban areas – and increases will occur only in areas where competition is less effective.

The plan would appear to have potential benefits primarily for heavy users of long distance services; business users and residential customers with a need for long distance calling. However, no customers will experience benefits from the Plan if reductions in access charges are not flowed through to retail rates, and the Plan does not appear to require such a flow-through.

Although the plan contains a provision that SLC rates will not increase for Lifeline customers,⁵ the plan, if adopted, would nevertheless make basic telephone service less affordable for low-income customers who do not qualify for Lifeline support, and thus would have negative consequences for universal service. The Texas PUC urges the Commission to consider alternatives to the

⁴ Missoula Plan at 20-21.

⁵ Missoula Plan at 64.

access charge reductions proposed in the Missoula Plan, such as offsetting reductions in access charge rates with increases in local interconnection rates.

II. The Missoula Plan Could Harm the Development of Competition in Texas

Several provisions of the Missoula Plan could adversely affect the development of competition in Texas, including the lack of compensation for competitive carriers from the restructure mechanism, the costly network reconfigurations required to implement the Plan's "edge" network architecture, and the classification of competitive local exchange carriers (CLECs) as Track 1 carriers regardless of the area that they serve.

Although competitive carriers will be required to reduce access charges in the same way and to the same extent as incumbent Track 1 carriers, the plan addresses only how incumbent LECs will be "made whole" for access charge reductions, and states only that "Restructure Mechanism dollars will be available to other carriers in circumstances to be determined in the future."⁶ Thus, while incumbent LECs will derive significant new revenue from the restructure mechanism, and will be insulated from the loss of access revenue not only from rate reductions, but also from competitive losses, CLECs will be required to reduce access rates, and may possibly need to reduce retail rates, with no such compensation. The lack of portability of the restructure mechanism would constitute a clear competitive disadvantage for CLECs.

⁶ Missoula Plan at 74.

The Plan introduces a new architecture for carrier interconnection, permitting carriers to designate the “Edge” at which other carriers must interconnect. Other interconnection locations are permitted, such as the “any technically feasible point” required by Section 251(c)(3) of the Telecommunications Act of 1996 or a point contained in existing interconnection agreements or arbitrations,⁷ but carriers are required to pay for transport from an alternate point of interconnection to the designated Edge. Depending on the cost of transport, carriers that currently interconnect at a point other than the designated Edge may be required to undertake costly network reconfigurations, and possibly renegotiate or re-arbitrate existing interconnection agreements. In any event, the Plan would impose additional costs on CLECs, and thus create another competitive disadvantage. The Texas PUC has expended considerable resources in arbitrating interconnection agreements since the passage of the Telecommunications Act of 1996, and the prospect of re-arbitrating those agreements is not appealing.

Finally, the Plan designates all competitive carriers and wireless carriers as Track 1 carriers, without regard to the nature of the territory they serve. CLECs operating in rural areas thus will be subject to different rate requirements and interconnection arrangements than the incumbent LECs with which they compete. CLECs would pay to the ILEC a higher rate for access traffic than they would be paid by the ILEC for such traffic, and would have

⁷ Missoula Plan at 41.

responsibility for paying higher rates for both access and local transport than would the ILEC. These provisions of the Plan create yet another competitive disadvantage for CLECs providing service in rural areas.

The Texas PUC urges the Commission to carefully consider the effects on competition in telecommunications markets that could result from these provisions of the Missoula Plan, most of which arguably do not appear to be necessary to address the problems in intercarrier compensation that the Plan was designed to address.

III. State Commissions Have Valuable Expertise in Addressing Local Market Conditions, and Should Not be Preempted of Their Authority Over Intrastate Services

The Plan will, in effect, require the states to relinquish their historically exclusive jurisdiction to regulate charges for intrastate services. That relinquishment of state authority is contemplated in the Plan to be in part voluntary and in part mandatory.⁸

The Plan proposes that states may voluntarily relinquish exclusive authority to regulate intrastate originating access rates for Track 1 carriers and originating and terminating access rate levels for Track 3 carriers. As a reward for voluntarily relinquishing jurisdiction, states will be entitled to receive payment from the “Early Adopter Fund,” or EAF. The Plan calls for the creation of the EAF in the initial amount of at least \$200 million. States (such as Texas) that have acted to reduce intrastate access rates and volunteer to adopt the

Plan's terms will be entitled to seek funding from the EAF and carriers in those states will be entitled to receive payment from the Restructure Mechanism. Conversely, states that have not acted to reduce intrastate access rates and do not voluntarily adopt the Plan's terms will not be able to seek funding from the EAF and carriers in those states will not be entitled to seek funding from the Restructure Mechanism.

Under the Plan, intercarrier compensation rate caps for Track 1 and 2 carriers will be mandatory, even for traffic that has historically been characterized as "local" and "intrastate access" and thus currently subject to state jurisdiction. The Plan clearly indicates that the Commission will be required to "...adopt and enforce rules designed to implement those [mandatory] terms."⁹ Although the Plan supporters present a detailed legal argument that the Commission has the current authority to preempt the states in regard to such traffic,¹⁰ the Texas PUC believes that any plan that proposes to preempt state jurisdiction to regulate intrastate traffic will be subjected to legal challenge. Such challenges will likely result in protracted litigation and years of continued uncertainty regarding the possibility of intercarrier compensation reform.

The Texas PUC believes that it is critical that states continue to have the discretion to develop intercarrier compensation rates that address the unique

⁸ See Missoula Plan at 3-4.

⁹ Missoula Plan at 3.

¹⁰ See The Missoula Plan: Policy and Legal Overview at 4-8.

nature of the traffic and market conditions existing in each state. The Texas PUC believes that states are also in a better position to tailor intercarrier compensation mechanisms to the types of traffic that are mandated by state law, such as expanded local area calling arrangements, and to implement statutorily mandated compensation mechanisms, such as bill and keep. Any proposed intercarrier compensation reform plan element (e.g. the EAF) that encroaches on Texas's historically exclusive jurisdiction, or that requests Texas's voluntary relinquishment of that jurisdiction, must be fully developed, realistic, and set out in comprehensive detail before the Texas PUC can be expected to offer its support.

Texas has been on the frontline with respect to addressing the myriad of intercarrier compensation issues that are market-affecting and, in many instances, cases of first impression. The Texas PUC has endeavored to create reciprocal compensation solutions that promote a competitively neutral, level playing field for all participants while minimizing opportunities for arbitrage. The Texas PUC is reluctant to support any intercarrier compensation reform plan that requires relinquishment of jurisdictional authority to continue in those endeavors, particularly if key elements of such a plan are not fully developed and explained beforehand.

IV. The Missoula Plan Fails to Achieve the Goal of Unifying Intercarrier Compensation Rates.

Unfortunately, the Missoula Plan fails to achieve the goal that it attempted to achieve – the unification of intercarrier compensation rates.

Existing rate disparities will be narrowed, but will still exist throughout the 4-year transition period. At the end of that period, the industry will be left with a variety of different rate levels, depending on the size of the carrier, whether it is rate-of-return regulated or under incentive regulation, and whether it is in a rural area.

For Track 3 rural carriers disparities between reciprocal compensation rates and access rates will continue to exist in some circumstances. If a Track 3 carrier has an existing intercarrier compensation agreement, at the expiration of that agreement it must charge the lower of the carrier's interstate access rate or the rate the carrier was charging when the agreement expired. If the Track 3 carrier's reciprocal compensation rate was set by arbitration of state regulation at zero, or "bill and keep," then the carrier will increase its reciprocal compensation rate to the lower of its interstate access rate or the highest cost-based reciprocal compensation rate. In both circumstances, the potential exists that a disparity could exist between reciprocal compensation and access rates.

The Texas PUC believes that a Plan that presents the potential for customer and competitive harms, and yet fails to achieve the desired goal of unifying intercarrier compensation rates is deeply flawed.

V. Conclusion

The Missoula Plan, by increasing the Subscriber Line Charge and the interstate USF assessment without requiring a corresponding flow-through of access charge reductions to retail long-distance rates, has the potential to harm

customers in Texas. Because all customers would see rate increases, with only business users and heavy long-distance residential customers receiving any potential benefits, basic telephone service will become less affordable, and the Commission's historic goal of promoting universal service will be threatened.

The Plan requires CLECs and wireless carriers to reduce access rates, and possibly retail rates, without the same compensation provided to ILECs through the restructuring mechanism. It may require CLECs to undergo costly network reconfigurations to conform to the Plan's new interconnection architecture. In rural areas, disparities between ILECs and CLECs will exist under the Plan both the in rates charged by each carrier for traffic exchange, and in the terms under which interconnection will be accomplished. For all these reasons, the Plan is anti-competitive, and may harm the facilities-based competition that the Commission has fostered.

Important components of the plan, such as the source of funding for the Restructure Mechanism and the Early Adopter Fund and the means by which EAF funding would be distributed to states, are not clearly specified in the plan. This lack of specificity makes it difficult to determine the impact on Texas telecommunications customers and service providers.

Finally, the Plan fails to accomplish the goal of unifying intercarrier compensation rates.

The Texas PUC appreciates the hard work that went into the development of the Missoula Plan, and commends NARUC's Task Force on

Intercarrier Compensation and the participants in the Missoula process for advancing the debate on intercarrier compensation. However, the Texas PUC cannot endorse a Plan that has the potential for real harm to customers and competitive markets in Texas. The Texas PUC urges the Commission to devise a solution to the many problems in today's intercarrier compensation regime without causing such harms, and looks forward to working with the Commission in developing such a solution.

Respectfully submitted,

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October 26, 2006

_____/s/_____
Julie Parsley
Commissioner

_____/s/_____
Paul Hudson
Chairman

_____/s/_____
Barry T. Smitherman
Commissioner